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**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing)	
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Filing Date: March 28, 2022)	Case No.: PSH-22-0072
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_____)	

Issued: July 21, 2022

Administrative Judge Decision

Noorassa A. Rahimzadeh, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material."¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual's access authorization should not be granted.

I. Background

A DOE Contractor employs the Individual in a position that requires him to hold an access authorization. As part of the processing of his clearance, the Individual was required to complete a Questionnaire for National Security Positions (QNSP), which he completed and submitted on July 28, 2021. Exhibit (Ex.) 7. In the QNSP, the Individual disclosed the fact that he failed to file and pay his federal and state income taxes for tax years 2015, 2016 and 2017. Ex. 7 at 33-34. He estimated that he owed approximately \$1,000 in federal and state income taxes for each year. Ex. 7 at 34. Regarding his failure to file or pay his income taxes, the Individual stated that he was never provided tax forms from his employer, despite his efforts to obtain them. Ex. 7 at 34. The Individual also disclosed in the QNSP that he was over 120 days delinquent on a car loan, owing approximately \$2,000. Ex. 7 at 36.

In conjunction with the investigation, the Local Security Office (LSO) obtained a copy of the Individual's credit report on August 4, 2021. Ex. 6. On August 17, 2021, the Individual underwent an Enhanced Subject Interview (ESI) conducted by an Office of Personnel and Management

¹ The regulations define access authorization as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as access authorization or security clearance.

(OPM) investigator. Ex. 8. During the interview, the Individual stated that he had not successfully obtained tax documents from his former employer, and as a result, failed to file his income taxes. Ex. 8 at 59. However, he indicated that he planned to seek assistance from the Internal Revenue Service (IRS) to resolve the matter. Ex. 8 at 59. The OPM investigator presented the Individual with a list of his outstanding debts, which were greater in number than what he had listed in the QNSP. Ex. 8 at 59-60. Regarding these debts, the Individual indicated that “the majority of [his] financial issues [were] the result of...not making enough money[.]” Ex. 8 at 59.

The LSO requested that the Individual complete a Letter of Interrogatory (LOI),² which he signed and submitted on November 30, 2021. Ex. 5. The Individual disclosed that, with regard to Debt 1, a loan which the Individual’s ex-wife obtained in the Individual’s name, he owed \$2,087, and that he intended to satisfy that debt with his tax refund from the 2021 tax year.³ Ex. 5 at 1; Tr. at 71-72. Concerning Debts 2 and 4, both from the same lender and both an automobile loan, the Individual cumulatively owed \$3,712. Ex. 5 at 1-2. He indicated that he was “working on an agreement to pay off [Debts 2 and 4].” Ex. 5 at 1-2. The Individual owed an outstanding amount of \$159 for Debt 3, a debt he said he had not been aware of until he examined his credit report. Ex. 5 at 1-2. He stated his intention was to satisfy Debt 3 in its entirety “in the near future.” Ex. 5 at 2.

The Individual explained that he was not employed for several months upon his discharge from a branch of the armed services, and when he did secure employment, he was not earning enough to satisfy his debts, even when he secured a second job. Ex. 5 at 2. He indicated that his current employment allows him to earn enough to satisfy his debts, and further, he stated that he enjoys greater financial security as a result of living in a two-income household. Ex. 5 at 2-3. The Individual also indicated that he created a budget so that he may live within his means. Ex. 5 at 3. At the time the Individual completed his LOI, he had not yet filed his federal and state income taxes for tax years 2015, 2016, and 2017. Ex. 5 at 3-6. Although he was aware that he was under an obligation to file his state and federal income taxes for those years, he stated that his employer had not provided him with the paperwork to do so. Ex. 5 at 3-6. In the LOI, he indicated that he did not owe any amount in federal or state income taxes for those tax years, which was inconsistent with what he had stated in the QNSP. Ex. 5 at 6.

Due to unresolved security concerns, the LSO began the present administrative review proceeding by issuing a letter (Notification Letter) to the Individual in which it notified him that it possessed reliable information that created substantial doubt regarding his eligibility to hold a security clearance and that his clearance had been suspended. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline F (Financial Concerns) of the Adjudicative Guidelines. Ex. 1. The Notification Letter informed the Individual that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

² The LOI was incorrectly marked as Exhibit 6 by the DOE. It is, in fact, Exhibit 5. A copy of the Individual’s credit report is Exhibit 6.

³ In his testimony, the Individual indicated that he did not satisfy this debt with his \$5,000 tax refund, as he had indicated in his LOI. Tr. at 73. Instead, he used it to pay off another debt that was not listed in the Notification Letter and to make some home repairs. Tr. at 73-77.

The Individual requested a hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on his own behalf and presented the testimony of his wife and a former colleague. *See* Transcript of Hearing, Case No. PSH-22-0072 (hereinafter cited as "Tr."). He also submitted nine exhibits, marked as Exhibits A through I. The DOE Counsel submitted eight exhibits marked as Exhibits 1 through 8.

II. Notification Letter and the Associated Concerns

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created substantial doubt concerning his eligibility for a security clearance. That information pertains to Guideline F (Financial Considerations). Guideline F provides that failure to live within one's means, satisfy debts, and meet financial obligations "may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information." Adjudicative Guidelines at ¶ 18. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern are an "[i]nability to satisfy debts[.]" and a "[f]ailure to file...annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required[.]" Adjudicative Guidelines at ¶ 19(a) and (f). With respect to Guideline F, the LSO alleged that: 1) the Individual failed to file his federal income tax returns for tax years 2015, 2016, and 2017; 2) the Individual failed to file his state income tax returns for tax years 2015, 2016, and 2017; and 3) the Individual has outstanding debts totaling over \$5,000. Ex. 1 at 1-2. This information justifies the LSO's invocation of Guideline F in the present case.

III. Regulatory Standards

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R.

§ 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. Findings of Fact and Hearing Testimony

In January 2022, the Individual began the process of satisfying his outstanding debts and filing his federal and state income taxes for the years in question. Tr. at 45. Regarding the concerns pertaining to his federal and state income taxes, the Individual testified consistently with the statement he provided in the QNSP and LOI, indicating that his former employer did not provide him with appropriate tax forms so that he could file his income taxes. Tr. at 62. The Individual testified that even though he would attempt to provide his former employer with reminders, the forms were never forthcoming. Tr. at 62-63. The Individual confirmed that he worked for his former employer in 2015, 2016, and 2017, and in 2017, he “hardly ever worked.” Tr. at 63. For the years after 2017, in which he worked for subsequent employers, the Individual testified that he did receive tax forms from his employers and, accordingly, he did file his federal and state income taxes. Tr. at 63-64. He further indicated that he prefers “to file [his income taxes] as soon as possible.” Tr. at 64. In 2022, the Individual filed his 2015 and 2016 state and federal income tax returns, as well as his 2017 federal income tax return. Tr. at 65-66; Ex. 2 at 11-12, 14-21. He indicated that he did not file his 2017 state income tax return, because he was told by a tax professional that he was not required to do so based on his reported income that year.⁴ Tr. at 70-71. He testified that he was able to obtain IRS wage and income transcripts⁵ for the years he failed to file his income taxes, and then proceeded to a tax service where the outstanding tax returns were prepared for him. Tr. at 65. The Individual was provided copies of the returns and mailed them himself in March 2022.⁶ Tr. at 65, 69.

The federal income tax returns indicate the Individual owes approximately \$4,400 for underpayment in 2015 and \$3,700 for underpayment in 2016. Tr. at 66; Ex. 2 at 11-12, 16-17. The Individual testified that at the time of the hearing, the IRS website had not yet indicated the Individual’s income tax returns had been processed, and accordingly, it did not reflect the amount the Individual owes. Tr. at 67. He testified that once his federal income tax returns are processed by the IRS, he will contact the IRS “to set up a payment plan” and “use all [of his income tax refunds from filing his income taxes for tax year 2022] to pay off the debt as quickly as possible.” Tr. at 68, 82. Regarding his state income taxes, the state income tax return forms indicate an underpayment totaling \$740 for tax year 2015 and approximately \$349 for tax year 2016. Ex. 2 at 14-15, 18-19. In much the same way, the Individual stated that he is awaiting confirmation that the state processed his returns so that he may establish a payment plan to satisfy the underpayments

⁴ The Individual’s 2017 wage and income transcript from the IRS indicates the Individual earned less than \$300 in “wages, income, and other compensation.” Ex. F.

⁵ The wage and income transcripts revealed the amounts the Individual’s former employer reported the Individual was paid. Tr. at 66. When asked if those amounts appeared to be accurate, the Individual confirmed under oath that he believes they are correct, stating that his former employer paid him approximately \$10 an hour less than he had promised him. Tr. at 66.

⁶ Copies of the filed tax returns are located in Exhibit 2. The Individual testified under oath that these tax returns are a true and accurate representation of the returns he sent to the IRS and the state. Tr. at 85.

for the aforementioned years. Tr. at 69. He further stated that there was no reason to believe that he would be unsuccessful in establishing a payment plan with the IRS or the state. Tr. at 82-83, 90.

The Individual's former coworker, who carpooled with the Individual to work every day to the job the Individual worked from 2015 to 2017, corroborated the Individual's testimony that he never received any tax documents from their former employer. Tr. at 52-53. The coworker's experience was similar to the Individual's in that, upon his hire, he was told that he would receive an IRS 1099 form. Tr. at 53, 55-56. However, he stated that he never received any such form from his former employer. Tr. at 54, 60. The Individual and his former coworker would be paid in cash every Saturday, and despite consistently asking their former employer for tax forms, those requested forms were never forthcoming. Tr. at 54-55, 59. The former coworker testified that in response to their requests, their former employer would "blow it off." Tr. at 59.

The Individual testified that his first wife had applied for a loan in his name without his knowledge, resulting in Debt 1. Tr. at 71-72. He alleged that once they received the money, she informed him of what she did and assured him she would pay the loan back. Tr. at 72. He stated that he believed that his ex-wife had satisfied that obligation and did not become aware of the fact that she had failed to do so until he underwent the ESI. Tr. at 72. Accordingly, the Individual stated that he acted to establish an automatic draft payment plan in January 2022, which will result in complete satisfaction of that debt by August or October 2022. Tr. at 72-73; Ex. 2 at 5-9; Ex. D. As of June 14, 2022, the Individual had made 20 payments and reduced the outstanding amount of Debt 1 to \$1,050. Ex. D; Ex. A at 42-45; Ex. B at 12-14; Ex. C at 12-13. Further, as of March 3, 2022, the Individual had paid Debt 3 in full. Tr. at 73-74; Ex. 2 at 3. Regarding Debts 2 and 4, which were the same creditor and charged off, the Individual established a single monthly payment plan in January 2022 to satisfy both of the debts. Tr. at 74-76; Ex. 2 at 10. A March 2022 letter indicated that the Individual was in compliance with the payment plan, and the record reflects that the Individual made appropriate payments pursuant to the plan in May and June 2022. Ex. 2 at 13; Ex. G; Ex. H; Ex. A at 20-27; Ex. B at 10-12; Ex. C at 9-12. The Individual stated that now that he has "consistent hours, consistent pay, [and a] pay raise[.]" he is "able to allocate more money towards debt." Tr. at 77-78.

Although the Individual's current wife was only familiar with the Individual's outstanding taxes and had some vague understanding of the other debts, she testified that the couple currently handles their finances together. Tr. at 39, 43. Accordingly, the Individual's wife testified that the couple has consistently filed their income taxes within the past few years, receiving refunds. Tr. at 39, 46. The Individual and his wife stated that they have devised a weekly method of budgeting, in that they make note of and pay every bill that is due that week before paying for necessities and discretionary items. Tr. at 41, 78, 86-87. The Individual also indicated that the couple also saves money with the purpose of ultimately satisfying the Individual's outstanding tax obligations. Tr. at 78. The Individual's wife testified that the bills that are satisfied first include the mortgage, the Individual's outstanding debts, credit card payments, utilities, and student loan payments. Tr. at 42-43. They have not sought financial counseling, but she asserted that they are currently able to satisfy their obligations, and do not obtain payday loans. Tr. at 41.

The Individual's wife and his former coworker both confirmed their belief that the Individual is trustworthy and reliable, with his wife testifying that the Individual has remained diligent in his efforts to satisfy all of his outstanding debts. Tr. at 40, 44, 56-57. The Individual's wife also stated that she believes the Individual possesses good judgement, and his former coworker described the Individual as "respectful" and "a good guy." Tr. at 44, 57. The Individual's former coworker also testified that the Individual is not a person with poor self-control or the sort who would fail to pay his debts and described the Individual as "responsible." Tr. at 57-58.

V. Analysis

The Adjudicative Guidelines provide, in pertinent part, that an Individual can mitigate security concerns under Guideline F if:

....

- d) The individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

....

- g) The individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Adjudicative Guidelines at ¶ 20(d) and (g).⁷

As an initial matter, the Individual completely satisfied Debt 3, and established payment plans to resolve Debts 1, 2, and 4. These payment plans have been in effect since January 2022, and the evidence in the record indicates that the Individual is in compliance with the payment arrangements. Further, based on his testimony and the 2017 wage and income transcript marked as Exhibit F, it appears the Individual was not under an obligation to file state income taxes for tax year 2017, and therefore acted appropriately by not doing so. The Individual also filed the remainder of the federal and state income tax returns mentioned in the Notification Letter in March 2022 and testified that the returns he submitted into the record were a true and accurate representation of the returns he provided the relevant tax authorities. However, I cannot conclude that the Individual has mitigated the Guideline F concerns as they pertain to the matter of his 2015, 2016, and 2017 federal income taxes or his 2015 and 2016 state income taxes. To begin, the fact that the Individual waited years to resolve the matter of his 2015, 2016, and 2017 taxes is cause for concern. Although he was not given tax documents from his former employer, he was still under an obligation to file his federal and state income taxes, and he ultimately found a way to file his taxes without receiving any paperwork from his former employer. This leads me to believe that the Individual could have filed his taxes much sooner than March 2022, and certainly sooner than when he began applying for a clearance.

Additionally, the Individual has not established a payment plan to satisfy the underpayments for the tax years in question. Accordingly, the Individual has not demonstrated compliance with any payment arrangements, as those arrangements have not yet been made. Further, my concerns

⁷ I have not addressed the mitigating factors at ¶ 20(a)-(c) and (e)-(f), as these mitigating factors are not applicable in this case.

regarding the matter are deepened by the fact that the Individual's plan to establish and execute a payment plan remains vague, despite his testimony that there is no reason to believe that he would be unsuccessful in establishing a payment plan with the relevant tax authorities. For example, the Individual indicated that he will use his income tax refund from tax year 2022 to satisfy his underpayments, but the refund amount he will receive remains to be seen. Further, there is no indication of how much the Individual will pay every payment cycle to satisfy the underpayments, and whether that payment amount will remain tenable in light of the Individual's other obligations. Accordingly, although the Individual has mitigated the Guideline F concerns pertaining to his outstanding debts pursuant to ¶ 20(d), I cannot conclude that the Individual has mitigated the Guideline F concerns pertaining to his 2015, 2016, and 2017 federal income tax returns and his 2015 and 2016 state tax returns pursuant to ¶ 20(g).

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guideline F of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has not brought forth sufficient evidence to resolve the security concerns set forth in the Notification Letter. Accordingly, the Individual has not demonstrated that granting his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, I find that the Individual's access authorization should not be granted. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Noorassa A. Rahimzadeh
Administrative Judge
Office of Hearings and Appeals